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IN THE
COURT OF APPEALS OF INDIANA

DANIELLE FOUNTAIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0701-CR-35
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D01-0404-FD-359

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Danielle Fountain appeals from her conviction for Possession of Cocaine, as a Class D felony, following a jury trial. The sole issue she raises on appeal is whether the State presented sufficient evidence to sustain her conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

At the beginning of his shift over the night of April 3-4, 2004, Officer John Cox of the South Bend Police Department had removed the back seat of his cruiser and searched in that seat and under the floor mats to make sure there was nothing there, as sometimes arrested persons drop items while in the back of the cruiser. In the early morning hours of April 4, Officer Cox observed Fountain "walking up and down the sidewalk in front of Benchwarmer's [Bar] yelling obscenities." Transcript at 131-32. Officer Cox then approached Fountain and informed her that if she continued with that behavior he would arrest her for disorderly conduct. Fountain apologized, and Officer Cox smelled alcohol on her breath. Officer Cox also noticed that Fountain was "swaying on her feet." Id. at 132. Nonetheless, Officer Cox gave Fountain the opportunity to go home, and Officer Cox returned to his vehicle.

As he approached his vehicle, Fountain once again began yelling obscenities and also attempted to enter the nearby bar. At that point, Officer Cox entered the bar and arrested Fountain for disorderly conduct and public intoxication. However, Fountain refused to cooperate with Officer Cox's attempts to place her in his vehicle. As a result of Fountain's lack of cooperation, Officer Cox "had to take [his] taser out and give her a

shock in the leg. Just one quick shock and she jumped in the back seat." Id. at 133. Officer Cox did not perform a pat-down search of Fountain before placing her in his vehicle because "she had tight enough pants on that I wasn't concerned about a weapon," and Officer Cox felt that a pat-down in such circumstances would have been inappropriate. Id. at 149. However, Officer Cox did notice that at the time of the arrest Fountain was carrying a cigarette. During the drive to the police station, Fountain yelled profanities and threats directed at Officer Cox, which Officer Cox recorded with his in-car video camera.

Upon arriving at the police station, a number of deputies assisted Officer Cox in removing Fountain from his car and escorting her inside the station. After Fountain was removed from his car, Officer Cox searched the back seat for dropped items. Officer Cox located the cigarette Fountain had been carrying at the time of her arrest "crumpled in [the] back seat and right next to the cigarette was a little paper envelope." Id. at 135. The piece of paper "was folded up into a bunch of squares," and when Officer Cox unfolded it he found a white powdery substance inside. That substance later tested positive for cocaine in the amount of 0.19 grams.

On April 5, the State charged Fountain with possession of cocaine, as a Class D felony. During the jury trial on December 15, 2005, Officer Cox testified that, on the evening in question, he never left his car unattended without locking it, and that from the time he searched his vehicle at the beginning of his shift until the time he placed Fountain inside of it, no other person was inside his cruiser. The jury found Fountain guilty as

charged, and the trial court sentenced her to eighteen months imprisonment. This appeal ensued.

DISCUSSION AND DECISION

Fountain contends that the State did not present sufficient evidence to support her conviction. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove possession of cocaine as a Class D felony, the State was required to show beyond a reasonable doubt that Fountain, "without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesse[d] cocaine." On appeal, Fountain maintains that the State did not meet its burden on two grounds. First, Fountain argues that she "did not exhibit conduct that would indicate she hid contraband in Officer Cox's police car," and she testified that she was not in possession of cocaine. Appellant's Brief at 10. Second, Fountain attacks Officer Cox's credibility, stating that "it is reasonable to believe that he may have forgotten or missed something" in the evening's initial search of his car and that Officer Cox's testimony was "not reasonable." Id. at 10-11.

Fountains arguments on appeal amount to requests for this court to reweigh the evidence, which we will not do. Jones, 783 N.E.2d at 1139. It is the jury's prerogative to assess the weight and credibility of witnesses, including Officer Cox and Fountain. See id. The evidence demonstrates that Officer Cox searched the back seat of his cruiser before beginning his evening shift and found nothing. Until Officer Cox placed Fountain in that back seat later in the evening, no other person had access to the back seat. And upon Fountain's removal from the back seat, Officer Cox promptly performed another search, this time discovering the cocaine. A reasonable inference to be drawn from that evidence is that Fountain dropped the cocaine in the back seat while she was there. On those facts, we must conclude that there is substantial evidence of probative value to support the conviction. See id.

Affirmed.

RILEY, J., and BARNES, J., concur.